The opinion in support of the decision being entered today was ***not*** written for publication and is ***not*** binding precedent of the Board.

Paper No. 36

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte JOHN KOLLAR

Appeal No. 1998-3109
Application 08/567,564

ON BRIEF

Before STONER, *Chief Administrative Patent Judge*, and WARREN and OWENS, *Administrative Patent Judges.*

WARREN, *Administrative Patent Judge.*

REMAND TO THE EXAMINER

In *In re Kollar*, 286 F.3d 1326, 62 USPQ2d 1425 (Fed. Cir. 2002), the United States Court of Appeals for the Federal Circuit vacated and remanded the decision by the Board in Appeal No. 1998-3109 in this application, in which a prior merits panel[1] affirmed the decision of the examiner finally rejecting claims 1 through 17. In the opinion, the Court stated the following:

> We therefore reverse the Board's conclusion that the examiner properly rejected the claims at issue under the on-sale bar. On remand, the Board may inquire whether Kollar, Redox, or any licensee of the invention (e.g., Celanese or ARCO) forfeited Kollar's right to obtain a patent to the claimed process by offering for sale a product

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[1] Chief Judge Stoner, Jr., has replaced Judge Robinson, who participated in the decision and has resigned from the Board.

made using that process more than one year prior to filing the '564 application. *See D.L. Auld*, 714 F.2d at 1147-48, 219 USPQ at 15-16. The Board may also inquire whether the on-sale bar of § 102(b) applies on account of acts of any of the above-mentioned parties, or any third party, that commercially exploits the claimed process by offering to actually perform that process to commercially produce ethylene glycol or any other compound. *See Scaltech*, 269 F.3d at 1328, 60 USPQ2d at 1691. [286 F.3d at 1334, 62 USPQ2d at 1431.]

The mandate of the Court is now of record (Paper No. 35), and thus this appeal is terminated. *See* Manual of Patent Examining Procedure § 1216.01 (8th ed., August 2001; 1200-46). Accordingly, our conclusion that the examiner properly rejected the claims at issue under the on-sale bar having been reversed, we remand the application to the examiner for further prosecution of the pending claims. The examiner may consider either or both inquires suggested by the Court as quoted above. The examiner should note , in this respect, the paper styled "RESPONSE TO INQUIRY EX. FED. CIR. VACATE AND REMAND," filed by applicant Kollar on April 24, 2002 (Paper No. 34), as well as the renewed request therein for a declaration of interference (page 2).

We hereby remand this application to the examiner, via the Office of a Director of the Technology Center, for appropriate action in view of the above comments.

Remanded

BRUCE H. STONER, JR.
Chief Administrative Patent Judge)

CHARLES F. WARREN
Administrative Patent Judge) BOARD OF PATENT APPEALS AND INTERFERENCES

TERRY J. OWENS
Administrative Patent Judge)

John Kollar
Redox Technologies, Inc.
6 Spencer Court
Wyckoff, NJ 07481